**OOI HOE SAN**

**v.**

**KIM TENG REALTY PTE. LTD.**

HIGH COURT, SINGAPORE
AP RAJAH J
[DISTRICT COURT APPEAL NO. 73 OF 1980]
19 NOVEMBER 1982

***LANDLORD AND TENANT:*** *Rent controlled premises - Tenancy - Notice to quit and claim for possession - Effect of - Statutory tenant - Rental in the name of partnership - Effect of.*

M/s Alkaff & Co., either the owners or the Managers of the rent controlled premises No. 327, Beach Road, rented it out to one Ng Hiang Liat the 1st defendant in the trial Court, sometime in 1966 at a rental of $67 per mensem. With the consent of M/s Alkaff the premises in question was sublet in 1970 to one Seng Bee Rubber Co. whose partners were the appellant and another.

Kim Teng Realty Pte. Ltd., the respondent purchased the said premises in 1972 and served notices on 26 October 1972 and 6 September 1979 on the 1st defendant to quit and deliver possession of the premises. On 7 November 1979 the respondents took a District Court Summons seeking to recover possession of the premises against the 1st defendant on the ground that he was not a statutory tenant under s. 27(a) of the Control of Rent Act and against 2nd defendant on the ground that he was in unlawful occupation of the premises. The learned trial Judge gave judgment in favour of the plaintiffs. The 2nd defendant/appellant appealed.

**Held:**

**[1]** When there is letting of premises in the name of partnership, all the partners at the time of the letting become joint tenants and the tenancy continues until such time as the last of the joint tenants disappears from the scene.

**[2]** By virtue of s. 26 the appellant had become a statutory tenant to the respondents.

*[Appeal allowed. Costs to appellant.]*

**Case referred to:**
*Eng Chuan & Co. & Ors. v. Four Seas Communications Bank Ltd. [1982] 2 MLJ 82D*

**Legislation referred to:**
Control of Rent Act [Sing], ss. 15(1)(g), 26, 27, (a)

*For the appellant - P. Suppiah*
*For the respondents - Tan Chin Tiong*

**JUDGMENT**

**AP Rajah J:**

This is an appeal by the 2nd defendant against the judgment of the learned District Judge wherein he allowed recovery of possession against both the 1st and 2nd defendants. The 1st defendant has not appealed.

The history of the case is as follows:

The plaintiffs became owners of 327, Beach Road, (the premises), subject matter of the action sometime in 1972. Prior to that date, Messrs. Alkaff & Co. either the owners or the managers of the property, had rented the premises sometime in 1966 to the 1st defendant at a rental of $67 *per mensem*. The premises are rent controlled and the case proceeded on the basis that there was no provision against sub-letting. The 1st defendant then furnished the empty premises with six writing tables, one steel cabinet, two weighing machines for weighing rubber, ten chairs and a shelf for putting letters (p. 52 of Record) and carried on a rubber business there under the firm or style of Buan Guan Heng. It would appear that with the consent of Messrs. Alkaff & Co. the 1st defendant sub-let the premises in 1970 to the firm of Seng Bee Rubber Co., the partners of which at that time were the 2nd defendant and Tay Bok Choon.

The plaintiffs purchased the property sometime in 1972 and soon after that they served a notice to Quit dated the 26 October 1972 (AB2) on the 1st defendant. As a result thereof the 1st defendant became a statutory tenant of the plaintiffs as from the 1 December 1972. By a further notice to quit dated 6 September 1979 (AB7) and served on the 1st defendant at the premises the plaintiffs required him to "quit and deliver up possession of the house and premises known as 327 Beach Road, Singapore held by you as tenant" on 31 October 1979 (or on the expiration of the month of his tenancy which will expire next after the end of one calendar month from the time of the service of the notice). The plaintiffs then took out a District Court Summons on the 7 November 1979 against the 1st and 2nd defendants whereby they sought to recover possession of the premises against the 1st defendant on the ground that he was not a statutory tenant under s. 27(a) of the Control of Rent Act (the Act) and against the 2nd defendant on the ground that he was in unlawful occupation of the premises.

During the course of the trial, more exactly when the 1st defendant was being cross-examined, the statement of claim was amended as follows:

> Further and in the alternative on the ground that the 1st defendant has sublet the premises to the 2nd defendant and receives from the 2nd defendant in respect of the subletting rents in excess of 110% of the recoverable rent paid by the 1st defendant himself under s. 15(1)(g) of the said Act.
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> (Pages 68 and 69 of the Record)

and this resulted in amendments to the defences of both the 1st and 2nd defendants (pp. 69 and 70 of the Record). So that the claim against the 1st defendant then proceeded on the basis that he, having become a statutory tenant at the end of the 1st Notice to Quit (AB2), was not in possession of the premises when the second notice to quit (AB7) was served on him or alternatively, that at the time of the second notice to quit (AB7) the 1st defendant had sublet the premises to the 2nd defendant and was receiving from him in respect of the subletting rents in excess of 110% of the recoverable rent in contravention of the provisions of s. 15(1)(g) of the Act.

Some of the difficulties of the learned trial Judge arose from his being under a misconception that the letting of premises in the name of a partnership could not in law create a tenancy. There is clear law that when there is such a letting then all the partners at the time of the letting become joint tenants and the tenancy continues until such time as the last of the joint tenants disappears from the scene. Counsel for the plaintiffs/respondents does not contest this proposition of the law.

In the event the learned trial Judge found against the 1st defendant on the alternative ground but made no finding on the original ground of whether the 1st defendant had ceased at any time to be in possession of the premises after he became a statutory tenant and so had lost

the protection of the Act. On the basis of the finding of the learned trial Judge, that is to say that the 1st defendant had offended against the provisions of s. 15(1)(g) of the Act it must follow that on the evidence before him he was satisfied that the 1st defendant was in possession of the premises when the second notice to quit was served and being in possession of the premises had sublet it to the 2nd defendant in contravention of s. 15(1)(g) of the Act and made an order for possession against the 1st defendant. This order operates under s. 26 of the Act to protect the 2nd defendant and to make him, on the particular facts of our case, the statutory tenant of the plaintiffs under the section.

Plaintiff's Counsel says that by virtue of the three agreements dated 1 October 1973, 1 October 1974 and 1 October 1976 between the 1st defendant and Seng Bee Rubber Co., new contracts had been entered into whereby new subtenancies had been created as between the 1st defendant, who was a statutory tenant as from the 1 December 1972, and the 2nd defendant and Tay Bok Choon. From here he goes on to say that as the 1st defendant was not in occupation of the premises he could not create a sub-tenancy in favour of the 2nd defendant and/or Tay Bok Choon and that from this it follows that the 2nd defendant is in unlawful occupation of the premises. However, it is contended on behalf of the 2nd defendant/appellant that the last three agreements were merely extensions of the first agreement dated the 1 September 1970 (Ex. DIC) for furnished premises which had been entered into previously and that at the time when the second, third and fourth agreements were signed the 1st defendant was in possession of the premises, as indeed he had always been as from when he first became tenant of the premises from 1966. So that in this case when the first notice to quit was served, and so terminating the contractual tenancy and creating thereafter a statutory tenancy, the sub-tenants of the premises were the 2nd defendant and Tay Bok Choon. It would be noted that all the four so-called agreements are between the 1st defendant and the firm of Seng Bee Rubber Co. Counsel for the respondent argues that the second, third and fourth agreements operated both as surrenders of tenancies and as creating new tenancies. I do not agree with this contention. On a proper construction of all four documents, I am of the view that the second, third and fourth agreements merely extended from time to time the protected furnished letting under the first agreement (Ex. DIC) dated 1 September 1970.

The crux of this case, in my opinion, is whether at the date of the second notice to quit, the 1st defendant was in possession of the premises within the meaning of s. 27 of the Act. In my view, he was so in possession for the following reasons:

1. On the evidence before the District Court, even if the 1st defendant was not in occupation of the premises or any part thereof, which, in my view, he was, his office furniture was on the premises. The letting to the 2nd defendant also included an element of rent for the office furniture.

2. The second notice to quit dated 6 September 1979 (AB7) was on the basis that the 1st defendant was a tenant of the plaintiffs. He was required to "quit and deliver up possession" of the premises to the plaintiffs. See the Privy Council case of *Eng Chuan & Co. v. Four Seas Communications Bank Ltd.* [1982] 2 MLJ 82D.

3. The second notice to quit, on the evidence before the Court, was served on the 1st defendant at the premises.

4. The learned trial Judge has found that on the date of the second notice to quit the 1st defendant, being the tenant of the premises, was letting it in such a way as to offend the provisions of s. 15(1)(g) of the Act and on this part of the learned District Judge's judgment I am in complete accord.

In my judgment the learned trial Judge, having found for the plaintiffs against the 1st defendant under s. 15(1)(g) of the Act should, as a necessary consequence thereof, have held that the 2nd defendant, by virtue of s. 26 of the Act, did become and is now a statutory tenant of the plaintiffs. There will therefore be an order accordingly. Costs of the appeal and of those incurred in the District Court to the appellant (2nd defendant).

Also found at [1983] 1 CLJ 51